

ORIGINAL

338
9/24/01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Petitioner,

v.

CORRECTIONS OFFICER LESTER,

Respondent.

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No. 1:01-CV-0041

(Judge Rambo)

(Magistrate Judge Smyser)

FILED
HARRISBURG

SEP 21 2001

MARY E. D'ANDREA, C
Per 9/5
DEPUTY CLERK

**DEFENDANT CORRECTIONS OFFICER LESTER'S WAIVER OF
PROPER SERVICE OF PLAINTIFF'S PETITION FOR WRIT OF
MANDAMUS AND BRIEF IN SUPPORT THEREOF AND PETITION
TO CANCEL HEARING OF OCTOBER 10, 2001**

AND NOW, comes Defendant, Corrections Officer Lester, by and through his counsel, Michael J. McGovern, and waives proper service of Plaintiff's Petition for Writ of Mandamus and Brief in Support thereof and petitions Your Honorable Court to cancel the hearing scheduled for October 10, 2001 at 3:30 pm and in support thereof avers as follows:


1. On June 27, 2001, Plaintiff filed a Petition for Writ of mandamus and Brief in Support thereof seeking access to certain legal

materials. Service of said Petition and Brief were not made on Defendant or his counsel.

2. On August 6, 2001, Your Honorable Court issued an Order directing Defendant, on or before August 14, 2001, to; file a brief in opposition to the Petition or a statement indicating Defendant did not oppose the Petition. Receipt of this Order on August 14, 2001 was Defendant's first notice of Plaintiff's Petition and Brief.
3. On August 16, 2001, Defendant filed a Motion to Stay Proceedings and for an Enlargement of Time to Respond to Plaintiff's Petition for Writ of Mandamus and Brief.
4. On August 17, 2001, Defendant obtained a copy of Plaintiff's Petition for Writ of Mandamus and Brief in Support thereof from the Clerk of Courts' Office.
5. On August 27, 2001, Defendant filed a Brief in Support of his Motion for Enlargement of Time and a Brief in Opposition to Plaintiff's Petition for Writ of Mandamus.

WHEREFORE, Defendant waives proper service of Plaintiff's
Petition for Writ of Mandamus and Brief in Support thereof and respectfully
requests Your Honorable Court to enlarge the time for Defendant to file his
Brief in Opposition to Plaintiff's Petition for Writ of Mandamus to and
including August 27, 2001, and further respectfully requests Your Honorable
Court to cancel the hearing now scheduled for October 10, 2001.

Respectfully submitted,
PA Department of Corrections,

By: 
Michael J. McGovern
Assistant Counsel
Office of General Counsel
55 Utley Drive
Camp Hill, PA 17011
717-731-0444

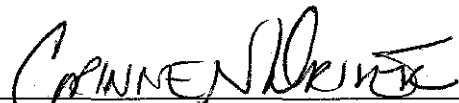
Dated: 9/21/01

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the below-referenced document(s) upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid, addressed as follows:

John Richard Jae, BQ-3219
SCI-Greene/SMU
175 Progress Drive
Waynesburg, PA 15370



Corinne N. Driver
Clerk Typist II
PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Fax: (717) 975-2217

Dated: 9/21/01

Re: Defendants Waiver of Proper Service and Petition to Cancel Hearing
John Richard Jae v. Corrections Officer Lester, USDC-MD 1:01-CV-0041